

June 29, 2006

MEMORANDUM

TO: Purchasing Offices
Departments, Institutions, Agencies
Commonwealth of Virginia

FROM: Ron Bell
Director

SUBJECT: Procurement Information Memoranda (PIM) #98-020

Enclosed is PIM #98-020, effective July 1, 2006, representing changes to the September 1998 edition of the *Agency Procurement and Surplus Property Manual (APSPM)*. The changes are noted in the table below. All changes to the *APSPM* are incorporated into a web-based *APSPM*, which is downloadable from the eVA and Division of Purchases and Supply websites at <http://www.eva.virginia.gov> and <http://dps.dgs.virginia.gov/dps/>, respectively. The version containing changes as a result of PIM #98-20 has been posted to the DGS/DPS website. The location of text changes is indicated by an arrow in the margin (—►) with the corresponding PIM number identified next to the changes.

Appendix C contains a log in which to list the PIM number and date of revision. This letter and the corresponding PIM #98-020 should be filed in the back of the Appendix C log.

	Summary of Changes
2.1 b. 13.	Reference to VEC is changed to VCE.
3.2 a., b., and c.	Each of the subsections a., b., and c., in 3.2 on Bonds is modified to indicate that for transportation-related projects authorized under § 33.1-12 that are in excess of \$250,000 and partially or wholly funded by the Commonwealth, the bid shall be accompanied by a bid bond. Performance and payment bonds are required for transportation-related projects authorized under § 33.1-12 that are in excess of \$250,000 and partially or wholly funded by the Commonwealth.
3.7 b.	The telephone contact number for the GSA 1122 Law Enforcement Procurement Program administered by the State Police is changed to 804-674-2000.
3.11	The first sentence in 3.11 on Multiple Awards is changed to allow multiple awards for professional services and reads, "When the terms and conditions of multiple awards are so provided in the Invitation for Bids or Request for Proposal, for other than architectural and engineering services, awards may be made to more than one bidder or offeror."

3.18 f.	The link to “Future Procurements” is added to this section.
3.26 A.	The first sentence in section A. on Prohibited Contracts is modified. It is changed into part (i) and adds part (ii) concerning if a contractor fails or refuses to remit income tax due thereunder. The second sentence is deleted and replaced by a new sentence which reads, “The provisions of clause (ii) shall not apply to any person that has (a) entered into a payment agreement with the Department of Taxation to pay the tax and is not delinquent under the terms of the agreement or (b) appealed the assessment of the tax in accordance with law and such appeal is pending.”
4.3 c.	The reference to the Availability of Funds clause being in Appendix B, Section II (Special Terms and Conditions) is changed to Appendix B, Section I (General Terms and Conditions).
4.10	Additional direction on how and when to determine price reasonableness is added.
4.18 b.	The reference to the Availability of Funds clause being in Appendix B, Section II (Special Terms and Conditions) is changed to Appendix B, Section I (General Terms and Conditions).
4.22 d. (2)	Under Consultant Services in the section on Non-Professional Services, the sub-section title is changed to Agency Responsibility and the reference to the 2003 Acts of Assembly is changed to the Appropriations Act. The new language of this section reads, “ Agency Responsibility. Agencies and institutions are responsible for assuring that the use and control of the services of private consultants is properly justified in terms of agency mission, programs, priorities, and funding. As required by the Appropriations Act each year, Use Of Consulting Services, all state agencies and institutions of higher education shall make a determination of “return on investment” as part of the criteria for awarding or using contracts for consulting service.”
4.23 f. (1)	A new sentence is added, as the eleventh sentence in the paragraph, to allow multiple awards if the terms and conditions of a solicitation include that provision. The new sentence reads, “Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.”
6.	Non-capital outlay construction is added to the list for which competitive sealed bidding is the preferred method of procurement for requirements over \$50,000.
Annex 6-B	Delete STEP Three, V. F. The reference to the Availability of Funds clause as a Special Term and Condition in the IFB Procedures is removed.
Annex 6-D	Delete the line and reference to Availability of Funds on the IFB SOLICITATION AND FILE CHECKLIST under, “The following items should be considered when developing the solicitation.”

7.4 c.	The following two sentences are added to the beginning of this section: “For competitively negotiated procurements, once evaluation and negotiations have been completed with selected offeror(s), the agency must prepare a written narrative summarizing the rationale for the ratings that are developed for each proposal received. The summary shall address the merits of the proposal relative to the evaluation ratings; it shall not compare proposals to each other (see Annex 7-H).” A second paragraph is added that indicates, “Note: Although DPS policy does not require agencies to conduct formal debriefings upon completion of the evaluation process, if after review of the procurement file a vendor requests further clarification of specific issues, the contract officer should be prepared to discuss pertinent information in regard to the procurement process. It is not intended that advice be provided in regards to how a vendor could strengthen future responses to make him more competitive, as that should be self-evident upon completion of his review.”
7.4 f.	A new subsection is added to give instructions on how to use the “Summary of Evaluation Ratings by Criteria Worksheet” (Annex 7-H).
Annex 7-B	Delete STEP 2, IX. D. The reference to the AVAILABILITY OF FUNDS clause as a Special Term and Condition in the IFB Procedures is removed.
Annex 7-E	Delete the line and reference to Availability of Funds on the RFP SOLICITATION AND FILE CHECKLIST under, “The following items should be considered when developing the solicitation.”
Annex 7-H	Annex 7-H is added entitled, Summary of Evaluation Ratings by Criteria Worksheet.
10.9	The second sentence in the section on Overshipments/Overruns is changed to read, “Increases or decreases exceeding \$500 shall be provided for by a change order (see 3.5 and 10.12) and shall be provided whenever requested by a supplier to ensure the supplier’s eVA transaction fee is accurate or as may be required by internal policy, and as required in 14.6.”
10.11 b.	The section on Payment and Invoice Processing, b. on Charge Cards Payments, changes the fourth sentence to read, “State agencies are required to participate in the SPCC program; participation in the Gold Card program is optional.”
13.7 a	<u>Section a.</u> on the Use of State Term Contracts adds that the contracts are posted under “State Contracts” on www.eva.virginia.gov .
13.7 c.	Section c. on Contract Information deletes reference to Annex 13-G for telephone numbers of contract officers.

13.7 d	Section d. on Contract Copies is removed and replaced by a new section d. entitled Agency or Institution Statewide Term Contracts which reads, “Agencies and institutions desiring to establish statewide term contracts, within their delegated authority, should consider the factors in 13.7 b. and whether the entity has the appropriate number and experience level of contract officers to handle the management of the term contract. A written request to establish a statewide term contract shall be sent to the DGS/DPS Director for approval, using the Procurement Exemption Request form (Annex 13-D). Upon the approval of the DGS/DPS Director, agencies and institutions may award a statewide term contract in accordance with the approval granted. Contract Management for any agency or institution-established contract shall be the responsibility of the entity establishing the contract.”
Annex 13-B	The DPS Organizational Chart is updated.
Annex 13-C	The Directory of Procurement Assistance is updated.
Chapter 14 is replaced in its entirety. The sections containing changes are listed below.	
Chapter 14	The listing under “In this Chapter look for . . .” adds section 14.15 entitled “Set-aside Advertisements for eVA and VBO.”
14.2	The eVA website address is updated to show www.eVA.virginia.gov .
14.5	The last sentence, which is covered elsewhere in the APSPM, is deleted.
14.5 a.	The third sentence is changed to require documentation of a single quote from the eVA e-Mall. A notation on the electronic purchase requisition (comments section) is acceptable documentation.
14.5 e.	The eighth and ninth sentences, which are covered elsewhere in the <i>APSPM</i> , are deleted.
14.6	The section on Change Orders is rewritten. “Change orders, regardless of dollar value, shall be processed whenever requested by a supplier to ensure the supplier’s eVA transaction fee is accurate, as may be required by internal policy when the actual invoiced amount differs from the purchase order total, and in accordance with the requirements set forth in Sections 3.5 and 10.12 of the <i>Agency Procurement and Surplus Property Manual (APSPM)</i> .”
14.8 c.	The section on Approvals, item c. deletes the words “Exceeding \$100,000.” This line now reads, “IT Equipment, Software and/or Computer Related Services: Refer VITA Guidelines.”

14.9 a. (1)	Section 14.9 on the Use of eVA and Exclusions modifies a., to add sub-sections (1) through (4). Sub-section a. (1) on the Use of eVA adds “without regard to agency-specific exemptions” after the word <i>VPPA</i> in the first sentence. This sentence now reads, “All purchase transactions, regardless of funding source, governed by the <i>VPPA</i> without regard to agency-specific exemptions, shall be processed through eVA to eVA registered vendors except as otherwise provided herein (see 14.11 or 14.9 b).”
14.9 a. (2)	The second paragraph of 14.9 a. is re-numbered as sub-section (2), on Enterprise Resource Planning Orders.
14.9 a. (3)	A new sub-section (3) on eVA Fees is added. This section reads, “Agencies and vendors shall pay eVA fees as set forth on the eVA Fee Schedule published on the billing and payment portal. The eVA Fee Schedule is defined as a listing of eVA registration, transaction, and other fees (eVA fees) that are assessed to eVA users, including Vendors. The eVA Fee Schedule is published on the eVA website. Each fee set forth on the eVA Fee Schedule is effective dated so eVA users, including Vendors, can determine the appropriate fee by cross referencing a fee’s effective date to the date of the activity for which the fee is assessed.”
14.9 a. (4)	A new sub-section (4) on Modification of Existing Contracts is added. This section reads, “By August 1, 2006, agencies and institutions with existing contracts that will result in new purchase orders issued August 16, 2006, and after, shall modify those contracts to incorporate the new General Term and Condition X and Special Term and Condition 59, if the order transaction fee is affected by the provisions of the new General Term and Condition X and the new eVA Fee Schedule set forth in Attachment A. When doing so, agencies and institutions shall give Contractors the opportunity to adjust contract prices based on any impact to the Contractor resulting from the new order transaction fee.”
14.9 b.	The second sentence of 14.9 b. is modified to read, “At the option of the agency or institution, these exempt transactions may be processed through eVA, but the agency or institution placing the order will be required to pay the eVA transaction fee specified in the eVA Fee Schedule published on the billing and payment portal.”
14.10 b.	The paragraph on the Trading Partner Agreement (TPA) and Electronic Catalogs is deleted in its entirety.
14.11	The first paragraph of this section entitled, Orders To Vendors Not Registered In eVA and Related Fees, is modified. It reads, “There may be times when an agency or institution is compelled to do business with a vendor that refuses to register in eVA (ad hoc vendors) and the specific purchase transaction is not included in the exemption list set forth in <i>APSPM</i> Section 14.9.b. In such cases, the agency or institution is required to process the order through eVA in accordance with one of the following processing options and order transaction fees will be assessed as specified in the eVA Fee Schedule:”

14.11 b.	The last sentence in 14.11 b. on Vendors Refusing to Accept eVA Terms and Conditions is deleted.
14.12	Section 14.12 on Self-Certification and Fees For Non-Compliant Purchase Transactions is modified. The NOTE paragraph is deleted. The fee due from agencies is changed to 2% of the total amount of all noncompliant transactions. See 14.12 for a full description of the changes.
14.14	A fax number (804-786-9201) and email address (cca@doa.virginia.gov) are added to the DOA contacts for Small Purchase Charge Card information.
14.15	A new section is added as 14.15 to address how to title Set-aside Advertisements for eVA and VBO. It reads, "Quick Quotes and other procurements that are to be set-aside for small businesses shall be titled in the 'Request Title' field using the following format (in all capital letters): SET-ASIDE FOR SMALL BUSINESSES, followed by the title of the commodity or service being procured (e.g., SET-ASIDE FOR SMALL BUSINESSES-Security Services)."
Annex 14-A	The Standard eVA Term and Condition in Annex 14-A is replaced in its entirety.
Appendix A	<p>New definitions are added for eVA Fee Schedule and Owner-Controlled Insurance Program.</p> <p>The definition of Multiple Awards revises the first sentence to read, "The award of multiple contracts for goods or services, meeting the same specifications, resulting from one solicitation."</p> <p>Definitions are revised for Minority Individual, African American, Asian American, Hispanic American, and Native American; the definition for Eskimos and Aleuts was eliminated.</p> <p>Definitions are revised for Minority-Owned Business, Small Business, Women-Owned Business.</p>
Appendix B, Index	Appendix B, Section I, Required General Terms And Conditions, Index. Add listing for Y. Availability of Funds.
Appendix B, Section I, X.	General Terms and Condition X is replaced in its entirety.
Appendix B, Section I, Y.	The Availability of Funds clause is added as a General Term and Condition.
Appendix B, Section II, 6.	The Availability of Funds clause is deleted as a Special Term and Condition and is added as a General Term and Condition in Appendix B, Section I, Y.
Appendix B, Section II, 7. G.	The award clause for professional services is modified to allow multiple awards for professional service procurements.

Appendix B, Section II, 43.	The Price Escalation/De-Escalation clause is modified to delete reference to the eVA transaction fee. This section deletes the second sentence and removes the words, “except for the eVA transaction fee,” at the end of the third sentence. The When Used guidance is modified to delete the last sentence.
Appendix B, Section II, 59.	Special Term and Condition 59, eVA Business-To-Government Contracts and Orders, is modified. eVA transaction fees are changed depending upon the date of order placement.
Index	The Index revises the listing for Availability of Funds. It adds new listings for eVA fees; Modification of Existing eVA Contracts; Set-aside Advertisements for eVA and VBO; Modification of Existing eVA Contracts; Evaluation Ratings by Criteria Worksheet, Summary, and Owner-controlled Insurance Program.

Changes to each of the chapters, appendices, index, and changes to the searchable whole *APSPM* version are available on the eVA website, under the *APSPM* Manual. Changes to the *Vendors Manual* are also available on the eVA website.

To print a hard copy of the manual, save the chapters and appendices to your hard drive or network and print from there. Printing directly from the website will result in lost formatting. Use the “whole *APSPM*” for text searches. If you should have questions about the changes, please contact Nancy M. Davis at 804-786-0323 or nancy.davis@dgs.virginia.gov.

2.1 b. 13.

Dentures: From full dentures to simple mouth guards. VCE dental prosthetics are made to the most exacting standards. Services include: soft mouth guards, relines of upper and lower, acrylic splints, space maintainers, surgical trays, surgical splints and hard mouth guards.

3.2 **Bonds**

- a. **Bid Bonds.** Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of \$100,000 or transportation-related projects authorized under § 33.1-12 that are in excess of \$250,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work specified in the bid. The amount of the bid bond shall not exceed five percent of the amount bid (*Code of Virginia*, § 2.2-4336).
 - (1) No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.
 - (2) Nothing in this section shall preclude the state from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$100,000 for nontransportation-related projects or \$250,000 for transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth.
- b. **Performance and Payment Bonds.**
 - (1) Upon the award of any (i) public construction contract exceeding \$100,000 awarded to any prime contractor, (ii) construction contracts exceeding \$100,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by a public body; or (iii) transportation-related projects exceeding \$250,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds (*Code of Virginia*, § 2.2-4337):
 - (a) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications, and conditions of the contract. For transportation-related projects authorized under § 33.1-12, such bond shall be in a form and amount satisfactory to the public body.
 - (b) A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the furtherance of the work. For transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.
 - (2) Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia and filed with the purchasing office that awarded the contract or a designated official thereof within 10 days after receipt of the purchase order or notice of award. See 3.2f on bond documentation review and Annex 3-E for guidance on processing and verifying the bonds validity.
 - (3) Nothing in this section shall preclude the state from requiring payment or performance bonds for construction contracts below \$100,000 for nontransportation-related projects or \$250,000 for transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth.
 - (4) Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the

subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract (*Code of Virginia*, § 2.2-4337).

- c. **Bonds on Construction Contracts.** Upon award of a nontransportation-related construction contract exceeding \$100,000, the contractor shall furnish a Performance Bond and a Payment Bond, each in the sum of the contract. Each bond shall be executed by one or more surety companies that are legally authorized to do business in Virginia. Form CO-10 Commonwealth of Virginia Standard Performance Bond, form #DGS-30-084, and Form CO-10.1 Commonwealth of Virginia Standard Labor and Material Payment Bond, form #DGS-30-088, shall be used. (Forms may be downloaded from the DGS/Division of Engineering & Buildings website, <http://deb.dgs.virginia.gov>).
- d. **Bonds on Other Than Construction Contracts.** State agencies may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation for Bids or Request for Proposal.
- e. **Alternative Forms of Security.** A certified check or cash escrow may be accepted in lieu of a bid, payment, or performance bond. If approved by the Attorney General, a bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond. The Virginia Department of Transportation is exempt from the requirements of this provision.
- f. **Bond Documentation Review.** Any procurement exceeding \$100,000, which specifies the issuance of bid, performance, and payment surety bonds, may necessitate the purchasing authority review of surety bond documentation in the absence of legal assistance to ensure the bond's validity (see checklist, Annex 3-E).

- 3.7 b. **Use of Other Cooperative Contracts:** Agencies and institutions desiring to participate in a cooperative procurement arrangement for non-telecommunications and non-technology goods and nonprofessional services as set forth in §2.2-4304 may do so without regard to their delegated purchasing authority. *APSPM* General Terms and Conditions shall apply.

General Services Administration (GSA) or other U.S. Government Contracts: Except as authorized by the United States Congress and consistent with applicable federal regulations, the direct placement of an order against a federal GSA contract is not permissible. The United States Congress has authorized use of certain contracts by specific entities under the 1122 Program. Information on contracts and entities authorized to use those contracts is available from the State Police website, www.vsp.state.va.us. Click on "More" then scroll to Law Enforcement Procurement Program. For additional information, contact the 1122 Program Manager, at 804-674-2000. The requirement to modify the original contract to add additional specific agencies or institutions to the contract does not apply to any contract awarded by the U.S. General Services Administration (GSA) or any other agency of the U.S. government that has been authorized for use by the U.S. Congress.

- 3.11 **Multiple Awards.** When the terms and conditions of multiple awards are so provided in the Invitation for Bids or Request for Proposal, awards may be made to more than one bidder or offeror. Unless otherwise specified in the solicitation, purchasing offices may award a multi-line item procurement in whole or in part or on an individual line item basis. In determining whether to make separate line item awards on a multi-line item solicitation, consideration should be given to the administrative costs to the agency of processing individual purchase documents, and separate invoices and checks.
- 3.18 f. In addition to its normal contract postings, each agency and institution shall post or provide accessible links to future anticipated contract opportunities on the eVA home page under the "Future Procurements" link (<http://dps.dgs.virginia.gov/apps/contracts/FutureProcurements.aspx>). These postings should include:
- (1) All existing term contracts with expiration dates, with such expiration dates clearly identified;
 - (2) Anticipated IFBs and RFPs that have not yet been developed including a best estimate of the date of issue of such IFBs and RFPs and contact information for potential vendors for pre-issuance contract information; and
 - (3) Other anticipated contract opportunities.

3.26 **Prohibited Contracts**

- A. No state agency except for institutions of higher education as defined by §2.2-4321.1 H. shall contract for goods or services with a nongovernmental source if the source, or any affiliate of the source, is subject to the provisions of (i)§ [58.1-612](#) and fails or refuses to collect and remit the tax on its sales delivered by any means to locations within the Commonwealth or (ii) Article 2 (§ 58.1-320 et seq.) or Article 10 (§58.1-400 et seq.) of Chapter 3 of Title 58.1 and fails or refuses to remit income tax due thereunder. The provisions of clause (ii) shall not apply to any person that has (a) entered into a payment agreement with the Department of Taxation to pay the tax and is not delinquent under the terms of the agreement or (b) appealed the assessment of the tax in accordance with law and such appeal is pending.

- 4.3 c. **Contract Period.** Term contracts normally cover a 12-month period or cite a specific time for completion for the project or service. A solicitation for a multi-year contract, or one that includes an option on the part of the state to renew the contract for an additional period, may be advantageous and should be considered; however, in determining the value of the contract and procurement method, all possible renewal periods must be included. Multi-year programs are subject to availability of funds, and each solicitation covering a multi-year period must contain an availability of funds clause (see Appendix B, Section I) and reference to the *Vendors Manual*. If price adjustments are to be permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract. Agencies should review all multi-year contracts at least annually to determine if the goods or services are still required, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory. Multi-year contracts including options to renew normally should not exceed 5 years.

- 4.10 **Price Reasonableness Determination.** A written price reasonableness determination is required to determine if prices bid or offered are fair and reasonable when:

- a. competition is restricted or lacking,
- b. the prices offered do not appear to be fair and reasonable,
- c. the decision is made to award to other than the lowest bidder or highest ranking offeror (appropriate award clause must have been included in the solicitation)

This also applies for any sole source purchase, single response purchase, contract change and contract renewal. The written determination of a fair and reasonable price requires that the price is acceptable to both the agency or institution and the bidder or offeror considering all circumstances. Circumstances include, but are not limited to, the degree of competition, market conditions, quality, location, inflation, value, technology and unique requirements of the procuring agency or institution. The written determination may be based on price analysis (comparison with prices previously paid, prices charged for functionally similar items, prices paid by other consumers, prices set forth in a public price list or commercial catalog, or state estimates) or through the analysis of price-to-unit variations, value analysis (make-or-buy study), or cost analysis. Advice and assistance can also be obtained from the appropriate buyer or contract officer at DGS/DPS. The written analysis must be supported by factual evidence in sufficient detail to demonstrate why the proposed price is deemed to be reasonable. If a determination is made that the prices offered are not fair and reasonable, then a decision has to be made whether to rebid seeking broader competition, revise specifications and rebid the requirement, or to negotiate a better price as may be identified through the price analysis process. A combination of these methods may be necessary. If it is a negotiated procurement, then the price should be negotiated to one that is fair and reasonable (see 3.1j and 7.4a).

- 4.18 b. **Installment Purchase.** The procurement process for the installment purchase of any materials, equipment or supplies must be handled in the same manner as the procurement of goods. A purchase order is issued in the full amount but only encumbering the amount to be paid in the current fiscal year. The solicitation should contain an Availability of Funds provision (see Appendix B, Section I). If the purchase is being financed by a third party, the purchase order must name both the vendor and the third party, and use the third party's address.

Installment purchases must also be made in accordance with the *CAPP Manual*, which gives a detailed discussion of the types and classification of leases and installment purchases. All solicitations for purchase of personal property, including personal property to be fixed to realty which provides for installment purchase where payment of purchase price is deferred through installment payments, includes the payment of interest, or is otherwise financed by the seller, lessor, or third parties shall have prior approval of the Treasury Board.

Contact the Director of Debt Management, Department of the Treasury at 804-371-0341 (*Code of Virginia*, § 2.2-2417).

- 4.22 d. (2) **Agency Responsibility.** Agencies and institutions are responsible for assuring that the use and control of the services of private consultants is properly justified in terms of agency mission, programs, priorities, and funding. As required by the Appropriations Act each year, Use Of Consulting Services, all state agencies and institutions of higher education shall make a determination of “return on investment” as part of the criteria for awarding or using contracts for consulting service.
- 4.23 f. (1) **Evaluation.** The procuring agency is to engage in individual discussions with two or more offerors deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. Such discussions may also include non-binding estimates of total project costs, including but not limited to where appropriate, design, construction and life-cycle costs. Non-binding methods to be utilized in arriving at a price for services may also be discussed. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussions outlined in this paragraph, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the procuring agency shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiation shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiation with the offeror ranked first shall be formally terminated and negotiation conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror. Should the procuring agency determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror (*Code of Virginia*, § 2.2-4301.3b). At any time during the negotiations, the procuring agency may terminate all negotiations and re-advertise the requirement. The reason for such termination is to be made a part of the file.
6. **General.** Competitive sealed bidding is the preferred method for acquiring goods, printing, non-capital outlay construction and nonprofessional services for public use when the estimated cost is over \$50,000. The competitive sealed bidding process is depicted in the flowchart in Annex 6-A.

Annex 6-B, IFB Procedures, STEP Three, V. F. –Delete F. **AVAILABILITY OF FUNDS:** Include in term contracts only or if the contract performance will overlap fiscal years.

Annex 6-D - IFB SOLICITATION AND FILE CHECKLIST

Delete the line and reference to **Availability of Funds under** - The following items should be considered when developing the solicitation:

- 7.4 c. For competitively negotiated procurements, once evaluation and negotiations have been completed with selected offeror(s), the agency must prepare a written narrative summarizing the rationale for the ratings that are developed for each proposal received. The summary shall address the merits of the proposal relative to the evaluation ratings; it shall not compare proposals to each other (see Annex 7-H). Agencies are not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Offerors may inspect the proposal records after evaluation and negotiations are complete, but prior to award (see 3.17 and *Code of Virginia*, §2.2-4342D).

Note: Although DPS policy does not require agencies to conduct formal debriefings upon completion of the evaluation process, if after review of the procurement file a vendor requests further clarification of specific issues, the contract officer should be prepared to discuss pertinent information in regards to the procurement process. It is not intended that advice be provided in regards to how a vendor could strengthen future responses to make him more competitive, as that should be self-evident upon completion of his review.

- f. Once negotiations have been finalized, complete the “Summary of Evaluation of Ratings by Criteria Worksheet” (Annex 7-H) and place in the procurement file. This worksheet should be a compilation of the evaluation committee’s ratings and not done by or for each committee member.

Annex 7-B, Competitive Negotiation Step-by-Step Procedures, STEP 2 IX. D. – Delete D. AVAILABILITY OF FUNDS:
Include in term contracts only or if the contract period will overlap fiscal years.

Annex 7-E - RFP SOLICITATION AND FILE CHECKLIST

Delete the line and reference to Availability of Funds under - The following items should be considered when developing the solicitation:

Annex 7 -H

Offeror: _____

Summary of Evaluation Ratings by Criteria Worksheet

RFP # _____

Criteria	Narrative Summary of Ratings

- 10.9 **Overshipments/Overruns.** An agency should not accept goods in excess of those specified on the purchase order or contract unless it is recognized as a custom of that industry (e.g. printing, cable, fabric), is so stated in the bid, and is accepted by the buyer. Increases or decreases exceeding \$500 shall be provided for by a change order (see 3.5 and 10.12) and shall be provided whenever requested by a supplier to ensure the supplier's eVA transaction fee is accurate or as may be required by internal policy, and as required in 14.6. In the event that an overshipment is not recognized until after receipt and not provided for in the award, the agency must notify the contractor that the overshipment will not be accepted and, unless the overshipment is picked up by the contractor, it will be returned at the contractor's expense. An agency, however, may for a valid and justified basis accept up to a 10% overrun in printing. Prices for overruns must not exceed the quoted base price per unit or the quoted price for additional copies run at the same time. Whichever price is less will prevail. Prices for underruns will be calculated at the quoted base price per unit. If an agency will not accept underruns or overruns, it must be stated in the specifications.
- 10.11 b. **Charge Cards Payments.** In an effort to streamline invoice and payment processing steps and sharply reduce paperwork, the Department of Accounts (DOA) has established a contract allowing agencies and institutions to use charge cards through two programs, the small purchase charge card (SPCC) and Gold Card. Unlike the typical consumer charge card, this program incorporates the features of corporate charge cards - national concept designed for business applications. Major program benefits include the reduction in the number of invoices processed by Commonwealth agencies and institutions, reduction in internal requisitioning reduced vendor collection costs, and payment to the vendor by the charge card company within as little as three business days. State agencies are required to participate in the SPCC program; participation in the Gold Card program is optional. Agencies, institutions and cardholders must follow all policies and procedures established in the Commonwealth Accounting Policies and Procedures (CAPP) Manual Section 20335 *Purchasing Charge Card*. Information can be obtained by calling DOA at 804-371-4350. Charge card purchases shall be processed through eVA unless the purchase is exempt from processing through eVA in 14.9 b.
- 13.7 **State Contracts.** DGS/DPS has responsibility for oversight of statewide mandatory and optional use term contracts for non-technology goods and non-professional services.
- a. **Use of State Term Contracts.** DGS/DPS provides support to state agencies through the establishment of both mandatory and optional use term contracts. The contracts may be executed for a single agency, selected agencies, or for the use of all state agencies and political subdivisions. Contracts are entered into in accordance with law and applicable procurement regulations. Agencies are advised of the existence of such contracts by means of written notices from DGS/DPS and are posted under "State Contracts" on www.eva.virginia.gov. These notices identify the contract vendor, prices, and the terms and conditions of the contract. The prices and terms obtained under mandatory use contracts are offered by bidders with the understanding that if the requirements are to be obtained from a nongovernmental source, they will be ordered from the contractor. The use of these contracts is mandatory for all state agencies and institutions for the purchase of items listed and available under the terms of the contract. Orders are placed against a state contract by preparing a purchase order in eVA. An agency or institution may not use its local purchase authority to purchase items from another source which are available under the terms of a mandatory use contract. If the goods or services available under the terms of a mandatory use contract cannot be used by an agency or institution, a request to purchase other goods or services of similar nature shall be submitted to the appropriate DGS/DPS contract/purchase officer for approval (see also 2.1). The Exemption Request form located in Annex 13-D should be used to request an exception from purchasing from a mandatory state contract.
- b. **Considerations in the Establishment of Term Contracts.** Before a term contract is established the following factors are considered:
- (1) Is there a sustained and recurring need for the product or service?
 - (2) What quality level is required? Are standard specifications for product quality or service performance available, and can product or service be measured against them?
 - (3) Do market experience and forecasts show stable pricing?
 - (4) Is there an adequate qualified vendor base to ensure competition?
 - (5) Will a term contract result in lower overall unit costs and be in the best interest of the Commonwealth?
 - (6) Will administrative effort and procurement lead-time be reduced?

- c. **Contract Information.** For contract information, contact the contract officer.
- d. **Agency or Institution Statewide Term Contracts.** Agencies and institutions desiring to establish statewide term contracts, within their delegated authority, should consider the factors in 13.7 b. and whether the entity has the appropriate number and experience level of contract officers to handle the management of the term contract. A written request to establish a statewide term contract shall be sent to the DGS/DPS Director for approval, using the Procurement Exemption Request form (Annex 13-D). Upon the approval of the DGS/DPS Director, agencies and institutions may award a statewide term contract in accordance with the approval granted. Contract Management for any agency or institution-established contract shall be the responsibility of the entity establishing the contract.

Annex 13-B

Department of General Services
Division of Purchases and Supply

<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="border: 1px solid black; padding: 5px; text-align: center;">Director</div> <div style="border: 1px solid black; padding: 5px; text-align: center;">Executive Secretary</div> </div>				
Virginia Distribution Center	Procurement Bureau	Administration/ Development	Policy, Consulting & Review	E-Procurement Bureau
Develop Specifications for Distributed Commodities	Perform Supplier & Market Research	Provide Administrative Support for Procurement Activities	Monitor All Agencies for Compliance & Performance Analysis	Facilitate Reassessment of DPS Business Processes & Systems for Effectiveness & Efficiency
Procure Agency Required Commodities	Assist With Specifications Preparation	Provide Daily Support for Automated Systems	Address Matters of Delegation	Research, Design & Implement Automation Technologies in Support of DPS Business Initiatives
Maintain Advisory Committees Which Will Advise VDC on Quality Requirements	Execute Procurements	Manage Budget Development & Execution	Facilitate Code, Policy, Procedure Review & Upgrade	Manage Electronic Commerce Development & Implementation
Monitor/Manage Costs to Ensure Superior Competitive Posture	Administer Contracts	Identify & Deliver Technical Training for Suppliers	Advise Agency on Procurement Issues	Provide Inter-Agency Guidance in Pursuit of Consistency
Optimize Inventory to Ensure Quality Service	Collaborate with Agencies on Current, Future "Unique" Needs	Manage Certification of Virginia Contracting Officer	Analyze Expenditure Data & Recommend Action Plans	eVA Functional Project Management
Conduct a Marketing Program for Distributed Commodities	Monitor Supplier Compliance	Promote Supplier Participation in State Bid Programs	Monitor, Analyze, & Develop Legislation	
Provide Quality Assurance Program Through VDC Laboratory				

Annex 13-C

July 1, 2006 Directory of Procurement Assistance

www.dgs.virginia.gov/dpsPhone Number**ADMINISTRATION/DEVELOPMENT**

Virginia Institute of Procurement, Administrative Support
 FAX (Learning & Development)
 FAX (Administration)

804-225-4058
 804-371-8937
 804-371-7877

BID RECEIPT AND ANALYSIS

804-786-5414
 804-786-8873

COMPETITIVE NEGOTIATION

Advice & assistance in proposal evaluations and negotiations

804-786-3862

CONTRACT COMPLIANCE

FAX

804-786-1602
 804-786-0223

DIVISION MANAGEMENT

Administrative Support
 FAX

804-786-3846
 804-371-7877

DIVISION RECEPTIONIST

FAX

804-786-3842
 804-225-3707

E-PROCUREMENT

eVA Customer Care
 Administrative Support
 FAX
 FAX

<http://www.eva.virginia.gov>

1-866-289-7367
 804-371-8363
 804-371-7877
 804-786-5413

MANUALS

Agency Procurement and Surplus Property Manual (APSPM)
Vendors Manual
Virginia Public Procurement Act

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<http://www.eva.virginia.gov>
<http://www.eva.dgs.virginia.gov>

POLICY, CONSULTING & REVIEW

Administrative Support
 FAX

804-371-8355
 804-786-5712

PURCHASE MANAGEMENT

Statewide Contracts and Services Administrative Support
 FAX

804-786-3862
 804-786-5413

Commodity; Spot Purchases, Printing and Single Agency Contracts

Administrative Support
 FAX

804-786-8996
 804-786-0223

VIRGINIA DISTRIBUTION CENTER

Accounting
 Administrative Support
 FAX

VDCweb@dgs.virginia.gov

804-328-3232, x4
 804-328-3232, x0
 804-328-3222

CHAPTER 14

ELECTRONIC PROCUREMENT

In this Chapter look for . . .

- 14. General
 - 14.1 Definitions
 - 14.2 Internet Access
 - 14.3 Agency Responsibility
 - 14.4 e-Mall Shopping
 - 14.5 Small Purchase Competitive Requirements
 - 14.6 Change Orders
 - 14.7 Documentation of Purchase Transactions
 - 14.8 Approvals
 - 14.9 Use of eVA and Exclusions
 - 14.10 Vendor Registration Requirement
 - 14.11 Orders To Vendors Not Registered In eVA and Related Fees
 - 14.12 Self-Certification and Fees For Non-Compliant Purchase Transactions
 - 14.13 eVA Multiple Orders
 - 14.14 Small Purchase Charge Card (SPCC)
 - 14.15 Set-aside Advertisements for eVA and VBO

Annexes

- 14-A Standard eVA Term and Condition

- 14. **General.** This chapter establishes policies and provides guidance on electronic procurement in Virginia, hereinafter referred to as eVA. eVA encompasses vendor central registration and source selection, requisitioning, solicitation development, soliciting and receiving formal and informal bids and proposals, bid/proposal tabulation and evaluation, electronic ordering, public posting, electronic receiving, electronic invoicing, electronic data record keeping and various reporting capabilities. Additionally, eVA facilitates item searches through an Electronic Mall (e-Mall), in which Commonwealth entities can shop mandatory sources and mandatory use and optional use term contracts, surplus property and non-contract sources, all displayed as electronic catalogs. **Policies in this chapter shall take precedence in the event of conflict with other sections of this manual.** The *Virginia Public Procurement Act (VPPA)*, other applicable sections of the *Code of Virginia*, as well as other provisions of this manual and *Vendors Manual* will remain in full force and effect. All purchase transactions, regardless of funding source, governed by the *VPPA* shall be processed through eVA to eVA registered vendors except as otherwise provided herein (see 14.11) or excluded in 14.9 b. Any purchases processed outside eVA will continue to be governed by applicable law and by the non-eVA policies and procedures contained in this manual and *Vendors Manual* in effect at the time of the transaction.
- 14.1 **Definitions.** Refer to the *eVA Implementation Guide's* Glossary of Terms for definitions as they apply to eVA.
- 14.2 **Internet Access.** Authorized use of eVA requires access to the Internet with equipment possessing the minimum rating of 32 MB RAM (64 – 128 MB recommended) with a 100 – 250 MB hard drive needed for Internet browser. Refer to the *eVA Implementation Guide*, Section II, E, for additional technical requirements. The eVA portal located at www.eva.virginia.gov is the gateway to facilitate a single sign-on to access all services available to the user when processing a purchase requirement, obtaining data analysis and reporting or to reach the help desk. A help desk is also available by calling DGS/DPS at 804-786-3842 or FAX 804-786-5712.
- 14.3 **Agency Responsibility.** Agencies and institutions should develop written internal policies, procedures and controls on the use of eVA. This should include re-delegation of purchasing authority, requisition approval process, how to

incorporate terms and conditions, interface with finance and accounting, record keeping, encumbrance of funds, receiving (central and/or decentralized) and interface with internal automated systems. Additionally, guidelines should be included for conducting compliance audits/reviews of purchase transactions made by or on behalf of agency employees. Although *BuysenseOrg* functionality will provide that each organization can use its own accounting structure, business rules and workflow, only minimal levels of approval should be included in the process so as to maximize the benefits of eVA. Descriptions on each of the eVA core functions are contained in the *eVA Implementation Guide*.

14.4 **e-Mall Shopping.** Any available mandatory source, mandatory use contract or optional use contract will appear in the response(s) received to an item search in the e-Mall. Unit prices shown in the electronic catalogs are inclusive of shipping charges; however, a minimum order requirement may apply, which can be determined by clicking on the item description to view further information. The extent to which agencies and institutions use eVA will be taken into consideration when evaluating requests for (and maintenance of) higher levels of delegated purchasing authority (see 1.2a). The below procedures shall apply to purchases made via the e-Mall:

- a. **Mandatory Sources and Mandatory Use Contacts (see 2.1):** Agencies and institutions shall place all orders through eVA on mandatory use contracts. Purchases may be made up to any dollar amount unless otherwise limited by the specific mandatory source or contract. Exception to the use of a mandatory source or contract must be approved in advance, in writing, by an official of the mandatory source, or the contract officer in the case of a DGS/DPS contract, utilizing the Procurement Exemption Request form located at Annex 13-D. Approved requests must be attached to the purchase transaction file either electronically or by hard copy.
- b. **Optional Use Contracts and Pricing Agreements (see 2.2a):** Purchases from optional use contracts may be made up to any dollar amount unless otherwise limited by the specific contract. Pricing Agreements allow for purchases from other sources; however, if it is to be made from another source and the total cost exceeds the single quote limit, the requirement must be competed.
- c. **Non-mandatory Sources (see 2.2b. & c.):** Surplus property listed in the e-Mall is available for purchase up to any dollar amount. Sheltered workshops are not listed. Purchases from sheltered workshops are exempt from competitive procurement within the guidelines stipulated in 2.2c, but can only be accessed outside eVA.
- d. **Open Market Sources:** In addition to any available mandatory source, mandatory contract or optional use contract, other vendors may appear as choices during the e-Mall shopping for the specific requirement. When a mandatory source or contract is not available to satisfy the requirement or an exemption has been granted to bypass it, any open market vendor may be selected when the total value does not exceed the single quote limit. See paragraph 14.5 for small purchase competitive requirements.

14.5 **Small Purchase Competitive Requirements.** Small purchase solicitations are not required to be publicly advertised for 10 days, but the deadline set for a response should take into consideration the agency's needs and the time needed by potential bidders to review the requirement and to offer a quote.

- a. **Single Quotation (up to \$5,000):** An e-Mall catalog (non-contract) price is acceptable as a quote when the value of the purchase is \$5,000 or less. The lowest priced item received as a result of an e-Mall catalog search need not be chosen, but such selection should be based on the product that best meets the need and the required delivery date and when the price is considered fair and reasonable. Documentation that the one quote selected is from the eVA e-Mall is required; a notation on the electronic purchase requisition (comments section) is acceptable documentation. Although an eMall catalog price response is acceptable, competition may be solicited via Quick Quote whenever the requirement is for multiple quantities and/or when it can be expected that a lower price and/or savings in shipping costs may be realized.
- b. Deleted.
- c. Deleted.
- d. **e-Mall Search Responses (up to \$5,000):** e-Mall catalog (non-contract) responses over \$5,000 shall not be accepted as valid quotes.
- e. **Quick Quote (over \$5,000 to \$50,000):** Solicitation of bids or quotes via Quick Quote is mandatory for non-contract requirements between \$5,000 and \$50,000. Solicit a minimum of four (4) valid sources; including two (2) minority or women-owned businesses, if available. Quick Quote may also be used to solicit a quote(s) for

requirements under \$5,000. Quick Quote solicitations should be open for a minimum of one (1) day to allow vendors to return pricing by the closing date and time. Vendors must be registered in eVA in order to respond electronically to Quick Quotes in eVA. Electronic Quick Quote responses and other methods for vendors to respond to Quick Quotes may be used simultaneously. Provide the Standard eVA Term and Condition in Annex 14-A when providing Quick Quote information to an ad hoc vendor. The resulting order must be processed through eVA. Reference the Quick Quote number in the header cross-reference field of the eVA requisition. Quick Quote solicitations and award notices are not required to be posted on the eVA website.

- f. Deleted.
- g. **Quick Quote (over \$50,000):** Quick Quote shall not be used to solicit competition for requirements over \$50,000; however, emergency purchase requirements meeting the criteria of paragraph 9.1 may be solicited via Quick Quote up to any dollar amount.
- h. Deleted. Note: A new section 14.14 is added to address the use of the small purchase charge card in eVA.

14.6 **Change Orders:** Change orders, regardless of dollar value, shall be processed whenever requested by a supplier to ensure the supplier's eVA transaction fee is accurate, as may be required by internal policy when the actual invoiced amount differs from the purchase order total, and in accordance with the requirements set forth in Sections 3.5 and 10.12 of the *Agency Procurement and Surplus Property Manual (APSPM)*. A Change Order Users Guide is available in eVA to assist in the preparation of change orders.

14.7 **Documentation of Purchase Transactions.**

- a. **Electronic Files:** Electronic files created in eVA and any attached from other sources are acceptable as documentation to support the why, who, what, when, where and how of purchase transactions and receiving reports. Paper documents need not be printed and maintained. Reports are available in eVA to provide sufficient detail to support the basis and history of each purchase. Any transaction that cannot be fully documented electronically should contain a cross-reference (what and where) to any other documents, such as large drawings or other files maintained as a hard copy.
- b. **Price Reasonableness:** Purchasing officers shall ensure that the price offered is fair and reasonable. Refer to sections 4.10, 8.4, and 10.13.

14.8 **Approvals.** Prior approval of specific procurement transactions, as required within other chapters of this manual, remain in full force and effect. Requests for approvals may be submitted electronically, via FAX or by mail. The following are examples of prior approvals that may be required:

- a. Non-Technology Sole Source Requirements Exceeding \$50,000: Refer to 8.2.
- b. Operational Emergencies Exceeding Delegated Purchasing Authority: Refer to 9.1b.
- c. IT Equipment, Software and/or Computer Related Services: Refer to VITA Guidelines.
- d. Telecommunications Equipment and/or Services: Refer to VITA Guidelines.
- e. Facilities, Equipment and Services Requiring Federal Communications Commission (FCC) Licensing: Refer to VITA Guidelines.
- f. Virginia Correctional Enterprises (VCE) and CORPRINT: Refer to 2.1b.
- g. Virginia Department for the Blind and Vision Impaired (DBVI): Refer to 2.1c.
- h. Virginia Distribution Center (VDC): Refer to 2.1e.
- i. DGS/DPS Office of Graphic Communications (OGC): Refer to 2.1f.

14.9 **Use of eVA and Exclusions:**

- a. **Use of eVA.**

- (1) All purchase transactions, regardless of funding source, governed by the *VPPA* without regard to agency-specific exemptions, shall be processed through eVA to eVA registered vendors except as otherwise provided herein (see 14.11 or 14.9 b). This includes orders imported to eVA from ERPs (enterprise resource planning systems).
 - (2) Enterprise Resource Planning Orders. Any ERP order provided to vendors, in lieu of or in advance of a corresponding eVA order, shall include the standard eVA order term and condition. See Annex 14-A.
 - (3) eVA Fees. Agencies and vendors shall pay eVA fees as set forth on the eVA Fee Schedule published on the billing and payment portal. The eVA Fee Schedule is defined as a listing of eVA registration, transaction, and other fees (eVA fees) that are assessed to eVA users, including Vendors. The eVA Fee Schedule is published on the eVA website. Each fee set forth on the eVA Fee Schedule is effective dated so eVA users, including Vendors, can determine the appropriate fee by cross referencing a fee's effective date to the date of the activity for which the fee is assessed.
 - (4) Modification of Existing Contracts. By August 1, 2006, agencies and institutions with existing contracts that will result in new purchase orders issued August 16, 2006, and after, shall modify those contracts to incorporate the new General Term and Condition X and Special Term and Condition 59, if the order transaction fee is affected by the provisions of the new General Term and Condition X and the new eVA Fee Schedule published on the billing and payment portal. When doing so, agencies and institutions shall give Contractors the opportunity to adjust contract prices based on any impact to the Contractor resulting from the new order transaction fee.
- b. **Exclusions.** Exclusions, regardless of dollar value, include the procurement types listed below. At the option of the agency or institution, these exempt transactions may be processed through eVA, but the agency or institution placing the order will be required to pay the eVA transaction fee specified in the eVA Fee Schedule published on the billing and payment portal. Agencies and institutions shall use the R02, S02, P02, E02, VR2, VS2, VP2, or VE2 eVA Purchase Order Category, as appropriate, to identify such purchases when processed through eVA. Purchase Order categories are defined on the Add Title screen in the PO Category field on the eVA requisition.
1. Real estate leases
 2. Advertisements such as in newspapers, magazines, journals, radio, television, etc.
 3. Professional organizational membership dues and training classes sponsored by the professional organization when payment is made directly to the professional organization sponsoring the training class.
 4. Conference registrations
 5. Petty cash purchases
 6. Honoraria
 7. Entertainment (speakers, lecturers, musicians, performing artists)
 8. Accreditation fees and academic testing services
 9. Exhibition rental fees for exhibitions of historical artifacts or original works of art. (The rental fee may include charges other than the rental of the exhibition, such as transportation costs.)
 10. Goods or personal services for direct use by the recipients of programs specified in the *Code of Virginia*, § 2.2-4345, if the procurement is made for an individual recipient. Contracts and/or spot purchases for the bulk procurement of goods or services for the use of recipients shall not be exempted.
 11. Award of grants by agencies and institutions to public bodies or tax exempt non-profit charitable organizations. This exception does not apply to the expenditure of grant funds by agencies and institutions for the purchase of goods and/or services (see *APSPM* 13.8e).

12. Medical (Health Care) Services when the service is provided by a hospital or an individual licensed and authorized by law to engage in the prevention, diagnosis, or treatment of human illness, injury, or physical disability, mental health, mental retardation, substance abuse, or emotional condition. Contracts and purchase orders between the agency or institution and temporary service providers or independent laboratory testing companies are not exempt from purchasing through eVA.
 13. Public Utilities (electric, natural gas, water, sewer)
 14. Purchases made via closed-loop systems or automated inventory control systems for items for resale, e.g., ABC, drugs (only POS drugs)
 15. Purchases made using the DPS-authorized multi-state drug contract
 16. Purchases made using DPS Contract #91026, Express Delivery Services
 17. Over the counter charge card purchases that are made at the site of the sale and picked up by the individual card holder (i.e., SPCC, Voyager).
 18. Revenue contracts, e.g., scrap, recycling or contracts with \$0 payment made by the Commonwealth, e.g., contracted out Bookstore, Food service operations.
 19. Government-to-government purchases, other than purchases from mandatory sources
 20. Purchases from public auctions (non-electronic)
 21. Surplus property
 22. Contracts with commercial fisherman for replenishment, research and stock assessment activities
 23. Individual travel and lodging
 24. Financing when goods/services procured from one source are being financed by another (i.e., third party) source. The financing exclusion does not apply to lease purchases.
 25. Business and/or financial transactions to which public procurement regulations do not apply. Examples include debt service payments, Medicare and Medicaid payments, and child support payments.
- c. **eVA Business-to-Government Vendor Registration.** The eVA Business-to-Government Vendor Registration clause, General Term and Condition X and the Price Escalation/De-escalation clause, Special Term and Condition 43, in Appendix B, shall be used in all term contracts. Spot purchases shall include General Term and Condition X (Appendix B, Section I). Existing multi-year term contracts without General Term and Condition X or with an older version of General Term and Condition X shall be renewed modifying the existing multi-year contracts to include General Term and Condition X and the Escalation/De-Escalation Special Term & Condition, #43 (Appendix B, Section II).
- 14.10 **Vendor Registration Requirement.** All vendors who accept purchase orders from Commonwealth agencies and institutions must register in eVA. All solicitations are subject to the General Terms and Conditions, which include General Term X. (eVA Business-to-Government Vendor Registration) requiring vendors to register to do business with the Commonwealth.
- 14.11 **Orders To Vendors Not Registered In eVA and Related Fees.** There may be times when an agency or institution is compelled to do business with a vendor that refuses to register in eVA (ad hoc vendor) and the specific purchase transaction is not included in the exemption list set forth in *APSPM* Section 14.9.b. In such cases, the agency or institution is required to process the order through eVA in accordance with one of the following processing options and order transaction fees will be assessed as specified in the eVA Fee Schedule:
- a. **Vendors Accepting eVA Terms and Conditions.** If the vendor agrees to accept the eVA terms and conditions regarding vendor payment of the eVA transaction fee, the agency or institution shall document the vendor's agreement in an eVA purchase order comment and process the order using the R01, S01, P01, E01, VR1, VS1, VP1 or VE1 Purchase Order Category, as appropriate.

- b. **Vendors Refusing to Accept eVA Terms and Conditions.** If the vendor refuses to accept the eVA terms and conditions regarding vendor payment of the eVA transaction fee, the agency or institution shall document the vendor's refusal in an eVA purchase order comment and process the order using the R02, S02, P02, E02, VR2, VS2, VP2 or VE2 Purchase Order Category, as appropriate.

14.12 **Self-Certification and Fees For Non-Compliant Purchase Transactions.** Monthly each agency and institution shall submit a self-certification that the agency has or has not complied with all requirements set forth herein. The self-certification shall be completed via a password protected electronic eVA Dashboard that can be accessed via a link on the eVA website. The self-certification shall be electronically signed by the agency or institution purchasing director, chief financial officer, or designee.

If the agency or institution certifies that it has not complied with the requirements set forth herein, the following shall also be submitted to the DPS eVA Business Manager, Patrick Henry Office Building 6th Floor, Room 6012, 1111 East Broad Street, (P.O. Box 1199), Richmond, VA 23218-1199.

- a. a detailed explanation for why the agency or institution failed to comply with the requirements;
- b. a corrective action plan for achieving timely compliance;
- c. an itemized list of all non-compliant purchase transactions (including purchase order number, date, vendor, amount, commodity code, CARS subobject code, and method of procurement); and
- d. a check payable to the Treasurer of Virginia or an IAT directed to the Department of General Services in the amount of 2% of the total amount of all non-compliant purchase transactions.

Self-certifications and any required additional documentation/payment shall be submitted no later than the 15th day following the end of the monthly reporting period (e.g., August 15th, September 15th, October 15th, etc.).

Failure to submit the required monthly self-certification and associated documentation will result in the automatic assessment of a 2% fee based on the agency's or institution's total CARS expenditure less eVA spend for the reporting period.

- 14.13 **eVA Multiple Orders.** When issuing solicitations that will result in more than ONE eVA purchase order as a result of the award, either by the establishment of a term contract or multiple delivery orders, the agency should include an explanation of how resulting orders from the award will be issued through eVA. Include the approximate number of orders on a weekly, monthly, quarterly or annual basis. Example: 4 purchase orders, quarterly; 12 purchase orders, one per month; 9 purchase orders, one per month during the school term; one purchase order annually. See Appendix B., Section II, special term and condition #59 to include in solicitations for term contracts or multiple delivery orders.
- 14.14 **Small Purchase Charge Card (SPCC):** Where a SPCC has previously been entered into the eVA system it should be used to affect payment of all purchase transactions up to \$5,000 processed through vendors accepting the card. Every effort must be made to ensure that whenever a card is issued or cancelled, when a restriction imposed on a card is changed, etc., that the eVA system is updated as soon as practicable. For information contact DOA at 804-371-4350, fax to 804-786-9201 or email to cca@doa.virginia.gov. Charge card purchases shall be processed through eVA unless the purchase is exempt from processing through eVA in 14.9 b.
- 14.15 **Set-aside Advertisements for eVA and VBO:** Quick Quotes and other procurements that are to be set-aside for small businesses shall be titled in the "Request Title" field using the following format (in all capital letters): SET-ASIDE FOR SMALL BUSINESSES, followed by the title of the commodity or service being procured (e.g., SET-ASIDE FOR SMALL BUSINESSES - Security Services).

Annex 14-A

Standard eVA Term and Condition

Standard eVA Order Term and Condition: This order is governed in all respects by the laws of the Commonwealth of Virginia, including the Virginia Public Procurement Act, the Commonwealth of Virginia Agency Procurement and Surplus Property Manual, and the Commonwealth of Virginia Vendors Manual copies of which are available at www.eVA.virginia.gov. The stated price(s) include shipping FOB destination unless otherwise stated in the body of the order. In addition, this order is subject to an eVA transaction fee in accordance with the eVA Fee Schedule a copy of which is available at www.eVA.virginia.gov. This fee will be invoiced to your company, approximately 30 days after the order issue date specified above, by the Commonwealth of Virginia, Department of General Services. Any modification to these terms must be agreed to in writing by both parties prior to performance of this order.

Appendix A – Definitions:

eVA Fee Schedule: eVA Fee Schedule is defined as a listing of eVA registration, transaction, and other fees (eVA fees) that are assessed to eVA users, including Vendors. The eVA Fee Schedule is published on the eVA website. Each fee set forth on the eVA Fee Schedule is effective dated so eVA users, including Vendors, can determine the appropriate fee by cross referencing a fee's effective date to the date of the activity for which the fee is assessed.

Minority Individual: "Minority individual" means an individual who is a citizen of the United States or a non-citizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
2. "Asian Americans" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Marianas, the Philippines, a U. S. territory of the Pacific, India, Pakistan, Bangladesh or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
3. "Hispanic American" means a person having origins in any of the Spanish speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

Multiple Award: The award of multiple contracts for goods or services, meeting the same specifications, resulting from one solicitation. When a Multiple Award clause is included in an Invitation for Bids/Request for Proposals, awards may be made to more than one bidder/offeror (*Code of Virginia*, § 2.2-4301). This is appropriate in situations where the award of a single contract would be impractical and awards are limited to the least number of suppliers necessary for a workable contract program.

Owner-controlled Insurance Program: Owner-controlled insurance program means a consolidated insurance program or series of insurance policies issued to a public body that may provide for some or all of the following types of insurance coverage for any contractor or subcontractor working on or at a public construction contract or combination of such contracts: general liability, property damage, workers' compensation, employer's liability, pollution or environmental liability, excess or umbrella liability, builder's risk, and excess or contingent professional liability.

Small Business: "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Appendix B, Section I, Required General Terms And Conditions, Index.

Add listing for Y. AVAILABILITY OF FUNDS.

- X. eVA Business-To-Government Vendor Registration:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.
- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
 - b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
 - c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
 - d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is :
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

*** When Used: Include in all solicitations, contracts, and contract renewals. In addition, this General Term and Conditions must be incorporated or incorporated by reference in all purchase orders issued by state agencies and institutions except for the procurement types which are excluded in section 14.9 or as otherwise provided in 14.10a.**

- Y. AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

Appendix B, Section II, Index, Special Terms And Conditions

6. Delete Availability of Funds Special Term and Condition from Index listing. Replace with: This section intentionally left blank.

Appendix B, 7.

- G. AWARD:** The Commonwealth shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage the public body may discuss non-binding estimates of total project costs, including, but not limited to, life-cycle costing, and, where appropriate, non-binding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the

public or to competitors. At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the purchasing agency shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the purchasing agency can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on, until such a contract can be negotiated at a fair and reasonable price. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

*** When Used: Professional services only. This clause shall not be used in an Invitation for Bids or to procure non-professional services.**

43. **PRICE ESCALATION/DE-ESCALATION:** Price adjustments may be permitted for changes in the contractor's cost of materials not to exceed the increase in the following index/indices: _____. No price increases will be authorized for ____ calendar days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each ____ days thereafter and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

Contractor shall give not less than 30 days advance notice of any price increase to the purchasing office. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. The contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation shall be supplied with the contractor's request for increase which will: (1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth of Virginia; and (2) verify the amount or percentage of increase which is being passed on to the contractor by the contractor's suppliers.

The purchasing office will notify the using agencies and contractor in writing of the effective date of any increase which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

*** When Used: For annual goods contracts where, because of rapidly changing market conditions, a firm fixed price cannot be secured for one (1) year or more. Enter the appropriate number of days in the blank space, such as 30, 60, 90 or 180 days, depending on the commodity and how frequently costs change. Examples of indices to be used are the Producer Price Index (PPI) and the Consumer Price Index (CPI).**

59. **eVA Business-To-Government Contracts and Orders:** The solicitation/contract will result in (_____) purchase order(s) with the eVA transaction fee specified below assessed for each order.
- a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
 - b. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

***When Used** Include in all solicitations, contracts and contract renewals. If the quantity of orders that will be issued is known, insert the expected number of orders in the blank provided (e.g., one, twelve, monthly, etc.). If the exact quantity is unknown, change the first sentence to read, "It is anticipated that the contract will result in multiple purchase orders (i.e., one for each delivery requirement) with the eVA transaction fee specified below assessed for each order."

Index

Agency or Institution Statewide Term Contracts	13.7d
Availability of Funds,	
General Terms and Conditions	Appendix B,I
eVA fees	14.9a(3)
Evaluation Ratings by Criteria Worksheet, Summary	7.4f. Annex 7-H
Modification of Existing eVA Contracts	14.9a(4)
Owner-controlled Insurance Program, Definition	Appendix A
Return on Investment	4.22d
Set-aside Advertisements for eVA and VBO	14.15
Statewide Term Contracts	13.7d
Term Contracts	13.7d